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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,599	05/22/2002	Ludovic Petit	Q68159	6533
23373	7590	02/17/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			WILLATT, STEPHANIE L	
			ART UNIT	PAPER NUMBER
			3732	6

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,599

Applicant(s)

PETIT ET'AL.

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The references cited in the Search Report of PCT/FR00/02151 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO-1449 form, must be filed within the set period for reply to this Office action.

Specification

2. The disclosure is objected to because of the following informalities:
- There are no headings in the specification. See the guidelines below for the headings.
 - The claim limitations, "spray nozzle insert" and "spray profile", are not given reference numbers in the specification or the drawings.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

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- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Objections

3. Claims 1-5 are objected to because of the following informalities:
- Regarding claim 1 (lines 4 and 16), the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
 - In the second to last line of claim 1, "the opening of said passageway means" does not make sense because line 16 of claim 1 states that the opening and the passageway means are the same thing. Therefore, "the opening of said passageway means" would be the same as saying "the opening of said opening".
 - In the second to last line of claim 3, "on the other side" would make more sense if it said "on another side". There is no antecedent basis for "the other side".
 - In claim 5, there is no antecedent basis for "the neck of the reservoir".
- Appropriate correction is required.

Drawings

4. The drawings are objected to because:
- The claimed "spray nozzle insert" and "spray profile" are not numbered.
 - There is only one figure, and it is labeled "Fig. Unique". According to CFR 1.84(u)(1), "Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation "FIG." must not appear."

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Lines 10-11 of claim 1 recite the limitation of "a spray profile for ensuring that the product is sprayed when the dispensing member is actuated." This limitation is not described in the specification so that one skilled in the

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art would understand what is being claimed. The specification merely states that it is preferable for the spray device to have "a spray profile for guaranteeing proper spraying of the fluid each time the dispenser is actuated." This statement does not give the spray profile any structure. Where is this feature in the drawing?

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Brakarz et al.

In the embodiment of Figures 2-4, 6, and 7, Schneider discloses a pasty fluid dispenser device comprising a fluid reservoir (storage chamber) with a pump (compression chamber 38) mounted to it. A dispensing head (pushbutton member 1) is mounted to the pump (compression chamber 29) to move between a rest position and a dispensing position, and it has a dispensing orifice (116). The device comprises a closure system (tubular guide portion 110) fixed to the reservoir (storage chamber) and it comprises a closure element (masking element 113) suitable for closing off the dispensing orifice (116) from the outside when the dispensing head (pushbutton member 1) is in the rest position. The closure system (tubular guide portion 110)

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includes an opening cooperating with the dispensing orifice (116) when the dispensing head (pushbutton member 1) is in the dispensing position, and making it possible for fluid to be expelled through the dispensing orifice (116), as shown in Figure 2. The closure system (tubular guide portion 110) is formed in such a way as to make it possible for the dispensing head (pushbutton member 1) to be actuated manually by a user. The dispensing head (pushbutton member 1) is mounted to move axially, as shown in Figures 2 and 3, and the dispensing orifice (116) is directed radially, as shown in Figure 4. The closure system (tubular guide portion 110) is implemented in the form of a hollow sleeve disposed around the dispensing head. The hollow sleeve has, on one side, the closure element (masking element 113) disposed above the opening, and on another side, a cutout through which the dispensing head (pushbutton member 1) projects so that it can be actuated by the user, as discussed in column 6, lines 44-65. While the dispensing head (pushbutton member 1) is returning from its dispensing position to its rest position after the dispensing member has been actuated, the closure element (masking element 113) slides snugly over the zone situated around the dispensing orifice (116), so as to remove any trace of fluid at the dispensing orifice (116), as discussed in column 5, lines 23-32. The closure system (tubular guide portion 110) is snap-fastened to the neck of the reservoir, as shown in Figures 6 and 7.

Schneider's dispenser is not a spray device. Schneider does not disclose a spray nozzle insert or that the pump has a dead stroke. Brakarz et al. discloses a spray device including a pump (cylindrical-shaped body 3 and piston 7) and a dispensing head (pressing button 9) with a spray nozzle insert (atomizer insert 10) for limiting the

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dead volume, as discussed in column 3, lines 41-52. The pump (cylindrical-shaped body 3 and piston 7) has an initial dead stroke, actuating the pump starting only after the dispensing head has traveled over the dead stroke, as discussed in column 3, lines 14-40. As stated in the rejection under the first paragraph of 35 USC 112 above, the meaning of the "spray profile" in this application is uncertain. Therefore, the examiner is using the only explanation found in the specification and claims, which states that the spray profile is for "ensuring that the product is sprayed when the dispensing member is actuated" to identify the "spray profile" in Brakarz et al. The spring (5) is considered the "spray profile" because it ensures that the product is sprayed when the dispensing member is actuated.

The elements of Brakarz et al. discussed above are all elements that are related to the type of dispenser it is: a sprayer. The elements of Schneider discussed above are related to any type of fluid dispenser. The closure element of Schneider does not necessarily have to be used on a paste dispenser. The closure element of Schneider only requires the dispenser it is used on to have a dispensing head with a radially directed orifice that moves axially when it is being actuated. The dispenser of Brakarz et al. has these features. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dispenser of Schneider with the spray pump components of Brakarz et al., including a spray nozzle insert, a pump with a dead stroke, and a spray profile for ensuring that the product is sprayed when the dispensing member is actuated, in order to precompress and spray less viscous fluids that tend to stick to the outside of the orifice.

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Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tuttle, Jr., Knickerbocker, and Siegel et al. disclose dispensers with wipers. Lina et al. discloses a precompression dispensing pump.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is 703-305-6316. The examiner can normally be reached on M-F (8:30-6:00) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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